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C O N F I D E N T I A L SECTION 01 OF 03 TBILISI 001627

SIPDIS

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TAGS: [PREL](#) [PBTS](#) [PHSA](#) [ETRD](#) [ETTC](#) [EWWT](#) [RS](#) [GG](#)
SUBJECT: GEORGIA: LEGAL QUESTIONS SURROUNDING OCCUPIED AREAS

REF: A. TBILISI 1587
[1](#)B. 8/24/09 OLSON-GEHRENBECK EMAIL
[1](#)C. TBILISI 1035
[1](#)D. TBILISI 1543
[1](#)E. 08 TBILISI 2071

Classified By: Ambassador John F. Tefft for Reasons 1.4 (b) and (d).

[1](#)1. (U) This is an action message; please see paragraphs 9-11.

[1](#)2. (C) Summary. Recent seizures by the Georgian Coast Guard of Black Sea vessels suspected of violating various Georgian laws, including the Law on Occupied Territories, have raised questions about the legal basis for Georgia's enforcement of its laws. Although Georgia has been taking similar enforcement actions for many years, the strong reaction of the Abkhaz de facto authorities, combined with the relatively new facts of Russia's recognition of the independence of Abkhazia and ongoing occupation, make a review of the legal environment, especially taking into account international legal obligations, worthwhile. To provide a comprehensive perspective on Georgia's legal authority to enforce its laws, protect its borders and defend its sovereignty, it will also be important to examine Russia's role as a occupying force, its concomitant rights and responsibilities, and the legal status of such steps as the establishment of military facilities and economic activities in Abkhazia. The Georgian government has welcomed the opportunity to discuss these issues with U.S. legal experts. Post requests the Department send a team of such experts to Tbilisi, or make such a team available in Washington, to conduct this conversation. End summary.

A HISTORY OF SEIZURES

[1](#)3. (C) The recent seizures of two ships suspected of entering, or intending to enter, the waters off Abkhazia (ref A) have shone a spotlight on the long-established Georgian practice of interdicting unauthorized trade with Abkhazia. Coast Guard sources indicate the practice dates back at least ten years, well before the current Georgian administration took office. Some changes have been implemented over the years. Prior to 2005, for example, interdictions involved only administrative penalties (primarily fines), with no detentions or court proceedings; beginning in 2005, the Coast Guard began detaining vessels and submitting cases to the courts for judicial consideration. In 2008, the Law on Occupied Territories was passed, which now serves as one of the possible bases for prosecution.

[1](#)4. (SBU) The Coast Guard provided post with the following list of incidents of vessels entering and departing Abkhaz ports dating from 1999. All vessels were charged with Illegal State Border Crossing; additional charges were made against some, as noted. Although Georgia clearly is focused on defending its sovereign right to determine who is authorized to enter Georgian territory, its concerns with customs and other violations also raise the important issue

of controlling illicit trade. There have been numerous allegations of criminal smuggling, including nuclear substances. The USG provides substantial assistance to the Border Police and Coast Guard so that Georgia can protect its borders and prevent nuclear smuggling. Abkhazia remains a region of great concern in this regard, and our own efforts to support the Georgians could be undermined without sufficient control of movements in and out of Abkhazia.

1999 - 2 ships detained: 1 under Turkish flag, 1 under Russian flag.
2000 - 2 ships detained: 1 under Russian flag, 1 under Q2000 - 2 ships detained: 1 under Russian flag, 1 under Turkish flag.
2001 - 3 ships detained: 2 under Turkish flag (charges included violation of customs rules), 1 under Ukrainian flag.
2002 - 1 ship detained under Estonian flag.
2003 - No ships detained.
2004 - 7 ships detained: 4 under Turkish flag (charges included illegal fishing, violation of navigation rules), 2 under Ukrainian flag (charges included illegal fishing, violation of navigation rules), 1 under Greek flag (charges included violation of navigation rules).
2005 - 2 ships detained under Turkish flag (charges included illegal fishing, violation of navigation rules).
2006 - 4 ships detained: 3 under Turkish flag (charges included illegal fishing, violation of navigation rules), 1 under Bulgarian flag (charges included violation of navigation rules).
2007 - 5 ships detained: 2 under Cambodian flag (charges included violation of navigation and customs rules), 2 under Ukrainian flag (charges included illegal fishing, violation of navigation rules), 3 under Russian flag (charges included

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illegal fishing, violation of navigation rules).
2008 - 1 ship detained under Moldovan flag (charges included violation of navigation and customs rules).
2009 - 5 ships detained: 2 under Turkish flag (charges included illegal fishing, violation of navigation and customs rules), 1 under Sierra Leone flag (charges included violation of navigation rules), 1 under Cambodian flag (charges included violation of navigation and customs rules), 1 under Panamanian flag (charges included violation of navigation and customs rules).

15. (SBU) In addition to the threatening statements made by Abkhaz de facto "president" Bagapsh (ref A), de facto "foreign minister" Sergey Shamba, in August 20 comments to Interfax, made additional threats to "provide a proportional response, i.e., undertake the same actions that the Georgian side allows itself." Alluding to similar incidents in the past, he said that Abkhaz naval forces had since increased their military capacity, suggesting that Abkhazia would do what might be necessary to defend shipments into Abkhazia.

RUSSIA'S IMPACT

16. (SBU) On August 26, 2008, Russia recognized the independence of Abkhazia and South Ossetia and has since developed its relationship with the two regions on that basis. For example, Russia has signed what it calls international agreements with the two regions; established diplomatic missions to them; and stationed several thousand troops and announced intentions to establish relatively permanent military bases in them. To date, only one other country, Nicaragua, has recognized the regions' independence. Georgia considers its sovereign territory to be under Russian occupation, a position the Department has confirmed (ref B).

17. (SBU) The Russian government has also encouraged Russian firms to conduct commerce with firms in both Abkhazia and South Ossetia, including trading with and investing in the two regions, in particular Abkhazia (refs C, D). On August 26, for example, Georgian press outlets reported that Rosneft

had established a subsidiary in Abkhazia, "RN Shelf of Abkhazia," to begin oil prospecting on the Black Sea shelf and to set up a gas distribution network. (Abkhaz de facto press outlet Apsnypress disputed that the subsidiary had been fully established.) The area reportedly could contain as much as 500 million tons of oil. On August 25, Georgian press outlets reported that Abkhaz de facto authorities had signed a contract to lease Abkhaz railways to Russian Railways in an effort to enable international commerce.

¶18. (SBU) Like the ships traveling to Abkhazia, such projects will presumably violate provisions of Georgia's Law on Occupied Territories (ref E) or other laws and regulations. Although it seems unlikely to post that Georgia would seek to enforce the law against Russian companies, it will likely ask the international community to evaluate Russia's actions, if not in the context of its own legislation, then at least in the context of international law. Russia will likely maintain that its recognition of the territories renders any Georgian attempts to legislate activities in Abkhazia null and void. (Interestingly, however, Russia has not taken a public position on Georgia's actions against ships trading with Abkhazia, as far as post is aware.) If relatively small shipments of scrap metal and fuel cause friction, the ability to explore and develop oil fields could potentially lead to Qto explore and develop oil fields could potentially lead to major confrontations.

U.S.-GEORGIA DISCUSSIONS

¶19. (C) On August 21, in conversations with Foreign Minister Grigol Vashadze and National Security Advisor Eka Tkeshelasvili, the Ambassador noted the complicated legal questions arising out of the Black Sea seizures and asked whether the Georgian side would be interested in having a conversation with U.S. legal experts on the topic. Both welcomed the idea. Tkeshelashvili, who is herself an international lawyer, also reinforced Georgia's general position that Georgia is in a state of occupation by Russia, as did Vashadze.

¶10. (C) Post believes it would be useful, for both the United States and Georgia, to clarify Georgia's legal authority to enforce its own laws and, more broadly speaking, defend its sovereignty under the conditions of occupied territory. How should Georgia go about seeking to intercept vessels it has reason to believe are violating Georgian law or even pose a danger to its territory, for example, if it is prevented from engaging them within 24 nautical miles of the Abkhaz coast by a concern over potentially provoking the power occupying

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Abkhazia, Russia?

¶11. (C) Such clarification could help the international community evaluate the situation in Georgia more accurately, thereby enabling a more substantive exchange during the Geneva talks, for example, or at the UN. It could help Georgia formulate an implementation plan for its Law on Occupied Territories, long overdue, that will relieve the concerns of international donors. Perhaps most importantly, it could help Georgia determine a general policy that will protect its interests, both now and in the future, while avoiding unnecessarily provocative and explosive confrontations. Post recommends that the Department assemble a team of legal experts to send to Tbilisi, or to meet with appropriate Georgian counterparts in Washington, to undertake these discussions.

TEFFT